

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 629 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE P.B.MAJMUDAR

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

VASANTRAI KARUNASHANKER

Versus

NATHABHAI RAJABHAI

Appearance:

MR PM THAKKAR for Petitioners
MR PRAVIN GONDALIYA for Respondent No. 1

CORAM : MR.JUSTICE P.B.MAJMUDAR

Date of decision: 09/05/2000

ORAL JUDGEMENT

#. This civil revision application is directed against the judgment and order of the learned Assistant Judge, Jamnagar in Regular Civil Appeal No.108/77 by which the learned appellate Judge has confirmed the decree for

possession passed by the trial court in Regular Civil Suit No.7/75. The facts leading to the present revision application are as under.:

#. That the respondent herein is the original plaintiff who filed the suit being Regular Civil Suit No.7/75 in the court of Civil Judge (JD), Kalawad against the defendant - tenant. It is the case of the plaintiff in the said suit that the defendant is the tenant of the suit premises which is described in Schedule-A attached to the plaint. That the monthly rent of the suit premises is Rs.60/-. The suit premises was let out to the original defendant who was medical practitioner for his medical profession. The defendant - tenant was in arrears of rent for about 12 months and he gave writing to the plaintiff on 23.11.1974 that, he will pay arrears of rent within one month. However, inspite of the said writing, the defendant did not pay any rent. The plaintiff, therefore, gave notice on 3.1.1975 intimating the defendant that he is in arrears of rent for more than six months and he was asked to pay arrears of rent. The defendant still did not comply with the same. The plaintiff, therefore, was compelled to file the aforesaid suit for possession as well as for arrears of rent.

#. The defendant appeared in the suit by filing the written statement at Exh.13. According to him, he was not negligent in payment of the rent. That he had offered the rent to the plaintiff by personally visiting him, but the plaintiff did not accept the said arrears of rent. It was, therefore, prayed that the suit is required to be dismissed.

#. The learned trial Judge framed various issues at Exh.22 and after recording the evidence and hearing both the sides, came to the conclusion that the defendant-tenant was in arrears of rent for more than six months. That the notice of demand is a valid notice and ultimately on the aforesaid ground of arrears of rent, the suit of the plaintiff was decreed. The trial court also passed the decree for Rs.900/- in favour of the plaintiff towards the arrears of rent.

#. The aforesaid decree of the trial court was challenged by the defendant - tenant by filing an appeal being Regular Civil Appeal No.108/77. The aforesaid appeal was heard by the learned Assistant Judge, Jamnagar who by his judgment and order dated 14.3.1980 dismissed the same.

#. The original defendant - tenant has preferred this

civil revision application against the aforesaid order of the appellate court.

#. During the pendency of this civil revision application, the original tenant - Vasantraai Karunashankar has died and his heirs are already bought on the record of this civil revision application.

#. At the time of hearing of this civil revision application, Mr.Kavina, learned advocate appearing for the petitioner submits that, the suit notice demanding arrears of rent is not in conformity with the provisions of Section 12(2) of the Bombay Rent Act. According to him, the landlord has not stated actual period for which the tenant is in arrears of rent and there is no clear demand in the notice. The suit for possession could not have been instituted on the basis of the said vague notice. He further argued that after the suit notice, the tenant has gone to pay the rent to the landlord and therefore, it should be presumed that the tenant was ready and willing to pay the rent.

#. Mr.Pravin Gondaliya for the respondent - plaintiff on the other hand has argued that, the plaintiff - landlord before demanding arrears of rent by way of demand notice, gave one more opportunity to the tenant by asking him to pay arrears of rent and at that time the tenant gave undertaking in writing to the plaintiff in which he had agreed to pay arrears of rent within one month. According to Mr.Gondaliya, therefore, the landlord has taken very charitable view by atleast giving one more opportunity to the tenant and he relied upon the aforesaid writing which is at Exh.32. But, since the tenant has not complied with the said writing, the landlord was constrained to give notice under section 12(2) of the Bombay Rent Act. He also further argued that, the say of the defendant that, he had gone to pay arrears of rent was merely an afterthought and there is nothing on record to substantiate the aforesaid oral say of the tenant.

##. Mr.Gondaliya further argued that, the defendant-tenant has already expired and the premises was given to him for his medical profession and even as per the rent note, the premises was given only for the aforesaid profession. After his death, since none of his heirs are Doctors, the suit premises is kept closed since considerable time. He, therefore, argued that, in the facts and circumstances of the case, in any case, the decree for possession is not required to be interfered with by this court while exercising revisional

jurisdiction under section 29(2) of the Bombay Rent Act.

##. So far as the submission of Mr.Kavina regarding validity of the suit notice is concerned, the contents of the suit notice are required to be considered at this stage. The suit notice is at Exh.33. The landlord has clearly stated in the suit notice that the suit premises is given to the tenant for the purpose of running dispensary and rent of 21 months is due. It is also stated that the tenant is, therefore, in arrears of rent for more than six months. The tenant was asked to pay the said rent, as he had executed the writing on 23.11.1974 by which the promise was given to pay the rent. But, thereafter, nothing has been paid. It was mentioned in the said notice that the tenant should pay arrears of rent and should hand over the vacant possession because of the aforesaid fact of nonpayment of the rent.

##. Mr.Kavina has argued that the rent of only 15 months was due and not of 21 months, and therefore, the statement regarding arrears of rent of 21 months was not correct statement in the notice. However, it is required to be noted that, simply because the landlord might have asked for arrears of rent for a longer period, that does not mean that the tenant should not pay arrears of rent which according to him, was due at the relevant time. Mr.Kavina has relied upon the judgment of this court in the case of Bapulal Kalidas (since deceased by his heirs) and others Vs. Bai Kashiben wd/o Chimanlal Chhaganlal reported in 18 GLR 77. In the aforesaid judgment, this court has taken the view that the notice demanding arrears of rent must comply with the requirements of law. Demand must be precise and should not be vague. In that case it was found that, the statement in the notice stating that the rent at a specified rate was in arrears for a period of more than six months was ineffective in law. However, so far as the facts of the present case are concerned, before giving the notice, the landlord has requested the tenant to pay arrears of rent and the tenant had given in writing that, he will pay arrears of rent within one month. So, when the tenant executed the said writing, he was aware that, he was in arrears of rent of particular amount. But, since he failed to abide by the aforesaid promise after waiting for couple of months, the landlord gave the aforesaid notice of demand. In the demand notice also, the landlord has clearly stated about the aforesaid writing executed by the tenant in favour of the landlord. Not only that, even in the suit notice, it has been mentioned that the tenant is in arrears of rent for about 21 months. It is nodoubt true

that, no specific amount is claimed in the aforesaid notice. However, we cannot ignore the facts that before issuance of the aforesaid notice, the tenant himself has executed the writing about arrears of rent. On his part the tenant, therefore, was conscious about the fact that, he has to pay the aforesaid rent, and therefore, when specific averments about the aforesaid writing of the tenant has already been made in the suit notice, it cannot be said that, the suit notice is vague. As per the say of the tenant himself, he was in arrears of rent, and therefore, he was required to comply with the aforesaid notice by sending the amount forthwith either tendering the same by money order or by giving it to the landlord personally. In view of the aforesaid conduct of the tenant and especially when he himself has given the writing in favour of the landlord, it cannot be said that the tenant was likely to be misguided in any manner by not mentioning the actual amount in the suit notice. Both the courts have believed that the aforesaid writing was genuine and it was executed by the tenant.

##. The aforesaid finding is a finding of fact and this court cannot reappreciate the aforesaid finding based on the evidence on record while exercising revisional power. In view of the aforesaid circumstances, it cannot be said that the notice of demand is not in conformity with the provisions of the Bombay Rent Act, because what is demanded in the notice was the amount on the basis of the tenant's own admission in writing at Exh.32. I, therefore, do not find any substance in the aforesaid argument of Mr.Kavina about the vagueness of the suit notice.

##. It was thereafter argued that, in response to the suit notice, the tenant had gone to pay the rent personally. The aforesaid say has not been believed by the courts below. If, the tenant was really vigilant, he could have sent the amount by money order in response to the suit notice. The learned appellate Judge has found in para 10 of his judgment that, Rs.60/- was quantified rent and the aforesaid rent was required to be paid after executing the document at Exh.32. No rent is paid by the tenant till the notice at Exh.33 was served on him. After the notice, the tenant has not paid any rent within one month from the receipt of the same. He was accordingly in arrears of rent for more than six months.

##. In that view of the matter, it cannot be said that the view taken by the courts below is in any way erroneous or contrary to law. If, the rent is payable by month, and when there is no dispute of the standard rent

taken within one month, then decree under section 12(3)(a) of the Bombay Rent Act is required to be passed. At this stage, reference is required to be made to the judgment reported in 31(1) GLR, 209 wherein the Honourable Supreme Court has stated that, if the dispute of standard rent is not taken within one month from the receipt of the suit notice, decree under section 12(3)(a) of the Bombay Rent Act is required to be passed.

##. So far as the argument of Mr.Gondaliya regarding nonuser of the suit premises is concerned, it is argued by Mr.Kavina that, since this is a subsequent event and since nothing has been produced on record, this court should not take the aforesaid fact into consideration. He states that, he is not aware whether the suit premises is kept closed or not. Since the aforesaid question was not the subject matter of the present proceedings, in my view, Mr.Kavina is right as there is nothing on record about the same and it is not possible to accept straightway the say of Mr.Gondaliya that the suit premises is kept closed since long. The said question, therefore, cannot be decided in the present revision application when there is no material on record. The only point which is required to be consider is arrears of rent.

##. At this stage, observations of the learned appellate Judge are required to be considered. The learned appellate Judge in para 16 of his judgment observed that the defendant has not paid the rent upto the date in the court, nor he made any deposit of rent regularly every month in the court. Of course, when the case falls under section 12(3)(a) of the Bombay Rent Act, there is no question of considering regular deposits during the pendency of the proceedings, because that will have bearing only when the case falls under section 12(3)(b) of the Bombay Rent Act. However, in view of the aforesaid observations regarding nonpayment of rent within one month from the receipt of the suit notice, decree of the trial court which was confirmed by the appellate court is required to be upheld.

##. I, therefore, do not find any substance in this civil revision application and the same deserves to be dismissed. Accordingly, civil revision application is dismissed. Rule discharged. Interim relief stands vacated. No order as to costs.

##. At this stage, Mr.Kavina learned advocate for the petitioners requested for granting reasonable time to the petitioners for vacating the suit premises.

Mr.Gondaliya, learned advocate for the respondent on the other hand argued that, since the suit premises is already kept closed since long, it is not necessary to give any time to the petitioners for vacating the suit premises. However, looking to the fact that, there is a interim relief against the execution of the decree since the matter was admitted by this court, I direct that the decree for possession shall not be executed till 30.11.2000. The petitioners are accordingly granted time to vacate the suit premises upto 30.11.2000 on condition that the petitioners shall file usual undertaking before this court on or before 10.7.2000. The petitioners should clearly mentioned in the said undertaking that they are in exclusive possession of the suit premises and that without obstructing in any manner, they will hand over the vacant and peaceful possession to the respondent on or before the aforesaid date. The petitioners should also pay mesne profits regularly at the rate of Rs.60/per month till they vacate the suit premises. If, the undertaking is not filed on or before the aforesaid date or subsequently, if there is any breach of the said undertaking, it will be open for the respondent-landlord to execute the decree for possession forthwith.

(P.B.Majmudar,J.)

(pathan)